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[A.M. No. P-13-3171. January 28, 2014]
(Formerly A.M. OCA IPI No. 11-11-116-MeTC)

RE: HABITUAL TARDINESS OF CESAR E. SALES, CASH CLERK III, METROPOLITAN TRIAL COURT, OFFICE OF THE CLERK OF COURT, MANILA.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ALL GOVERNMENT OFFICIALS AND EMPLOYEES ARE REQUIRED TO RENDER NOT LESS THAN EIGHT HOURS OF WORK PER DAY FOR FIVE DAYS A WEEK; WHEN MAY AN OFFICER OR EMPLOYEE OF THE CIVIL SERVICE BE CONSIDERED HABITUALLY TARDY AND/OR HABITUALLY ABSENT; EXPLAINED.— All government officials and employees are required to render not less than eight hours of work per day for five days a week, or a total of 40 hours of work per week, exclusive of time for lunch. Generally, these hours are from eight o'clock in the morning to five o'clock in the afternoon, with lunch break between 12 noon and one o'clock in the afternoon. Under CSC Memorandum Circular No. 04, s. 1991, an officer or employee shall be considered habitually tardy if he is late for work, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester, or at least two (2) consecutive months during the year. x x x An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester, or at least (3) consecutive months during the year. x x x Under Memorandum Circular No. 04, s. 1991, of the Civil Service Commission and reiterated by the Court in Administrative Circular No. 14- 2002, dated March 18, 2002, the taking and the approval of leave of absence follow a formal process, – an application for leave must be duly approved by the authorized officer. "By reason of the nature and functions of their office, officials

Supreme Court E-Library

and employees of the Judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust." Pursuant to this *dictum*, the Court issued Memorandum Circular No. 49-2003, dated December 1, 2003, reminding all government officials and employees to be accountable at all times to the people and exercise utmost responsibility, integrity, loyalty and efficiency. They must give every minute of their prescribed official time in the service to the public and must work for every centavo paid to them by the government. "This duty calls for the observance of prescribed office hours and the efficient use of official time for public service, if only to recompense the government, and ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees should at all times strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible."

2. ID.; ID.; GRAVE OFFENSES; THE CIVIL SERVICE COMMISSION MEMORANDUM CIRCULAR CLASSIFIES FREQUENT UNAUTHORIZED ABSENCES AND TARDINESS IN REPORTING FOR DUTY AS GRAVE OFFENSES; PENALTIES.— Section 52, Rule IV of CSC Memorandum Circular No. 19, s. 1999, classifies frequent unauthorized absences and tardiness in reporting for duty as grave offenses, punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense. In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the crime shall be considered.

3. ID.; ID.; ID.; LENGTH OF SERVICE IS AN ALTERNATIVE CIRCUMSTANCE IN DETERMINING THE IMPOSABLE PENALTY OF AN ERRING GOVERNMENT OFFICIAL OR EMPLOYEE; APPLICATION IN CASE AT BAR.— In the present case, we do not find any circumstance that would mitigate Sales' liability. True, Sales has been in the Judiciary for almost 17 years, but length of service, as a factor in determining the imposable penalty in administrative cases, is a double-edged sword. It is not a circumstance that, once invoked, will automatically be considered as a mitigating in favor of the party invoking it. While it can sometimes help

Supreme Court E-Library

mitigate the penalty, it can also justify a more serious sanction. Length of service, in other words, is an alternative circumstance. This is clear from Section 53 of the Uniform Rules on Administrative Cases in the Civil Service, which amended the Omnibus Civil Service Rules and Regulations dated 27 December 1991. The title and opening paragraph of Section 53 provides that the attendant circumstances enumerated therein may either be considered as mitigating, aggravating or alternative circumstances by the disciplining body. Having been repeatedly warned that a repetition of the same or similar offense of habitual tardiness shall be dealt with more severely, his length of service cannot mitigate the gravity of his offense or the penalty he deserves.

D E C I S I O N

***PER CURIAM*:**

A Report[1] submitted by the Leave Division, Office of the Court Administrator (*OCA*) dated October 19, 2011 shows that respondent Cesar E. Sales, Cash Clerk III, Office of the Clerk of Court, Metropolitan Trial Court, Manila, had always been tardy in going to the office for the months of January to September 2011, as follows:

January	-	20 times
February	-	14 times
March	-	10 times
April	-	13 times
May	-	17 times
June	-	13 times
July	-	15 times
August	-	11 times
September	-	12 times

[1] *Rollo,* p. 2.

Supreme Court E-Library

In the 21 working days of January 2011, Sales' Daily Time Records (*DTRs*) show that he was tardy 20 times and came on time only once, on January 3, 2011 at 8:00 a.m. In February, he arrived on time only on the 15th, 23rd, and 25th, and was on sick leave on the 8th, 9th, and 28th. In March, he had 10 incidents of tardiness, and applied for sick leave on the 7th and was on forced leave on the 14th to 18th. In April, he came on time only on the 7th and was late 13 times. He was also on sick leave for five days, on the 5th and on the 26th up to the 29th. During the month of May, he was tardy on all the days he went to the office and was on sick leave for five days. In June, he reported on time only on the 6th and was on sick leave on the 7th up to the 10th, and on the 17th and 27th. He was tardy on the days he reported to the office during the month of July and went on sick leave six times on different dates. In August, he was tardy during the days he went to the office. He was also on sick leave for 7 days and was on vacation leave for three days. During the month of September, there were 21 working days but he reported to the office only 12 times and was tardy on all these days. He was on sick leave for six days and on vacation leave for three days. On the days he was on leave, he indicated in his DTRs "sick leave applied," "vacation leave applied" or "forced leave applied." However, it was not shown whether his applications have been approved by his superiors.[2]

In a 1st Indorsement dated November 21, 2011, the OCA required Sales to comment on the charge of habitual tardiness.[3]

In his comment[4] dated January 17, 2012, Sales admitted his frequent tardiness in going to the office. Although he was aware that he could be dismissed from the service anytime because of his habitual tardiness, he continued to report for work late in the hope that the Court would be lenient and would give him the chance to continue serving the Judiciary. He claimed that the thought of losing his job had greatly affected his health. He

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[2] *Id.* at 3-11.

[3] *Id.* at 12.

[4] *Id.* at 13-14.

Supreme Court E-Library

expressed deep remorse and sought the liberal treatment of the Court in considering his violations.

In an Agenda Report[5] dated May 21, 2013, the OCA recommended that –

(1) The Report dated 19 October 2011 x x x of the Leave Division, Office of Administrative Services, Office of the Court Administrator, be RE-DOCKETED as a regular administrative matter against Mr. Cesar E. Sales x x x for habitual tardiness; and

(2) x x x Sales be FOUND GUILTY of habitual tardiness and accordingly DISMISSED from the service with forfeiture of retirement benefits except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.[6]

All government officials and employees are required to render not less than eight hours of work per day for five days a week, or a total of 40 hours of work per week, exclusive of time for lunch. Generally, these hours are from eight o'clock in the morning to five o'clock in the afternoon, with lunch break between 12 noon and one o'clock in the afternoon.[7] Under CSC Memorandum Circular No. 04, s. 1991, an officer or employee shall be considered habitually tardy if he is late for work, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester, or at least two (2) consecutive months during the year.[8]

In the case of Sales, he had continuously incurred tardiness during the months of January to September 2011 for more than 10 times each month, except during the month of March when he only came in late 10 times.

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[5] *Id.* at 15-17.

[6] *Id.* at 17.

[7] CSC Memorandum Circular No. 21 dated June 24, 1991.

[8] See also Supreme Court Administrative Circular No. 14-2002 dated March 18, 2002.

Supreme Court E-Library

This is the third time that Sales has been charged of habitual tardiness. The OCA Report[9] shows that he has previously been penalized for habitual tardiness. He was reprimanded in A.M. No. P-08-2499, suspended for 30 days without pay in A.M. No. P-05-2049, and suspended for 3 months without pay in A.M. No. P-11-3022. Despite previous warnings that a repetition of the same offense would be dealt with more severely, Sales failed to mend his ways.

Sales' DTRs show that he is not only habitually tardy but also habitually absent from office. An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester, or at least (3) consecutive months during the year.

Sales' absences for the months of January to September 2011 exceeded the allowable 2.5 days monthly leave credit. For every month during this period, he was absent for more than 2.5 days. Although he indicated in his DTRs "sick leave applied," "vacation leave applied" and "forced leave applied," he failed to submit proof that his applications for leave had been approved by the proper authorities.

Under Memorandum Circular No. 04, s. 1991, of the Civil Service Commission and reiterated by the Court in Administrative Circular No. 14-2002,[10] dated March 18, 2002, the taking and the approval of leave of absence follow a formal process, – an application for leave must be duly approved by the authorized officer.[11]

Section 52, Rule IV of CSC Memorandum Circular No. 19, s. 1999, classifies frequent unauthorized absences and tardiness in reporting for duty as grave offenses, punishable by suspension of six (6) months and one (1) day to one (1)

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[9] *Rollo*, pp. 15-17.

[10] *Supra* note 8.

[11] *Estardo-Teodoro v. Segismundo*, A.M. No. P-08-2523, April 7, 2009, 584 SCRA 18, 29.

Supreme Court E-Library

year for the first offense and dismissal from the service for the second offense.

In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the crime shall be considered.[12]

In the present case, we do not find any circumstance that would mitigate Sales' liability. True, Sales has been in the Judiciary for almost 17 years, but length of service, as a factor in determining the imposable penalty in administrative cases, is a double-edged sword.[13] It is not a circumstance that, once invoked, will automatically be considered as a mitigating in favor of the party invoking it.[14] While it can sometimes help mitigate the penalty, it can also justify a more serious sanction.[15] Length of service, in other words, is an alternative circumstance. This is clear from Section 53 of the Uniform Rules on Administrative Cases in the Civil Service, which amended the Omnibus Civil Service Rules and Regulations dated 27 December 1991. The title and opening paragraph of Section 53 provides that the attendant circumstances enumerated therein may either be considered as mitigating, aggravating or alternative circumstances by the disciplining body.

Having been repeatedly warned that a repetition of the same or similar offense of habitual tardiness shall be dealt with more severely, his length of service cannot mitigate the gravity of his offense or the penalty he deserves.

"By reason of the nature and functions of their office, officials and employees of the Judiciary must be role models in the faithful observance of the constitutional canon that public office is a

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[12] CSC Memorandum Circular No. 19, s. 1999, Section 53.

[13] *Mariano v. Nacional*, A.M. No. MTJ-07-1688, February 10, 2009, 578 SCRA 181, 188.

[14] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, 605.

[15] *Supra* note 13 at 188.

Supreme Court E-Library

public trust."[16] Pursuant to this *dictum*, the Court issued Memorandum Circular No. 49-2003, dated December 1, 2003, reminding all government officials and employees to be accountable at all times to the people and exercise utmost responsibility, integrity, loyalty and efficiency. They must give every minute of their prescribed official time in the service to the public and must work for every centavo paid to them by the government. "This duty calls for the observance of prescribed office hours and the efficient use of official time for public service, if only to recompense the government, and ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees should at all times strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible."[17]

WHEREFORE, the Court finds respondent Cesar E. Sales, Cash Clerk III, Office of the Clerk of Court, Metropolitan Trial Court, Manila, **GUILTY** of habitual tardiness and habitual absenteeism. He is hereby ordered **DISMISSED** from the service, with forfeiture of all benefits, except accrued leave credits (if any), and with prejudice to re-employment in any government branch or instrumentality, including government-owned or controlled corporations.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

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[16] *Re: Employees Incurring Habitual Tardiness in the 1st Semester of 2007,* 576 SCRA 121, 133.

[17] *Cabato v. Centino,* A.M. No. P-08-2572, November 19, 2008, 571 SCRA 390, 395.